1967 *Present :* G. P. A. Silva, J., and Siva Supramaniam, J.

W. G. PUNCHI SINGHO, Appellant, *and* BOGALA GRAPHITE CO., LTD., and another, Respondents

S. C. 57/66 (F)—D. C. Avissawella, 11490/M

Delict—Collision—Negligence—Mechanical defect—Res ipsa loquitur—*Burden of proof.*

Plaintiff claimed damages caused to his lorry by a collision between his lorry and the 1st defendant's lorry. The evidence showed that the 1st defendant's lorry, which was being driven by the 2nd defendant, was on the wrong side of the road when it struck the plaintiff's lorry and that the accident was due to a sudden disorder in the steering mechanism of the defendant's lorry.

Held, that the maxim *res ipsa loquitur* was applicable. The burden was on the 1st defendant to satisfy the Court that he caused periodical checks and had necessary repairs attended to and did everything in his power to ensure the mechanical soundness of his lorry.

Wije Bus Co. Ltd. v. Soysa (50 N. L. R. 350) not followed.

APPEAL from a judgment of the District Court, Avissawella.

Ralph de Silva, for the 1st defendant-appellant.

K. Kanthasamy, for the plaintiff-respondent.

Cur. adv. vult.

September 20, 1967. G. P. A. SILVA, J.—

The plaintiff respondent in this case brought this action against the 1st defendant appellant and the 2nd defendant respondent for the recovery of a certain sum being the cost of the damage caused to his lorry as a result of a collision between his lorry and a lorry belonging to the 1st defendant and driven by the 2nd defendant at the time of the impact. The allegation of the plaintiff was that the collision was due to the negligence of the 2nd defendant in that he—

(*a*) drove his vehicle without a proper look out and/or

(*b*) drove his vehicle without due care or precaution and/or

(*c*) failed to keep to the left or near side the road and/or

(*d*) failed to stop on seeing the lorry belonging to the plaintiff.

The defendants in their answer denied these allegations and further stated that the collision was due to an inevitable accident. Several issues were raised of which the material ones were :

(1) Was the said collision an inevitable accident in that the steering lock of the lorry driven by the 2nd defendant suddenly and unexpectedly, gave way,

(2) If so, is the 1st defendant liable,

(3) Was the failure of the steering mechanism due to the negligence of the 1st defendant and/or the 2nd defendant.

The learned District Judge answered issue (1) in the negative as a result of which the answer to issue (2) did not arise. He also answered issue (3) in the following terms " The failure of the steering mechanism was due to the negligence of the 1st defendant " and awarded damages to the plaintiff in a sum of Rs. 1,587/05.

Although several grounds were set out in the petition of appeal, the only one which was seriously argued was that the learned District Judge was in error in holding that the failure of the steering mechanism was due to the negligence of the 1st defendant in not having taken the necessary precautions for the avoidance of the defect in the steering mechanism which caused the accident. The decision taken by the District Judge revolves round the question, to what extent the owner of a mechanically driven vehicle is liable for a defect in the mechanism.

The facts relevant to this question were not seriously contested and, it was shown that the 1st defendant's lorry driven by the 2nd defendant, swerved to the wrong side of the road and collided with the plaintiff's lorry which was proceeding on its correct side in the opposite direction and caused damage to the right front mud guard lights and buffer of that lorry. Thd 2nd defendant promptly informed the driver of the plaintiff's lorry that the steering mechanism of his lorry had got locked and resulted in the accident. The evidence for the plaintiff therefore established a prima facie case of negligence by the operation of the principle of 'res ipsa loquitur' and it was for the defendants to discharge the burden attaching to them. The learned District Judge took the view that the 1st defendant had not discharged the burden placed on him and entered judgment for the plaintiff.

The question raised is one which has received consideration by courts both here and in England from time to time and several cases were cited during the argument. In *Safena Umma v. Siddick*,[1] where it was proved that a bus, which was driven along the road at a fast speed, suddenly left the road and knocked down a boy standing on the doorstep of a house it was held by Dalton J. that the facts proved constituted, in the absence of an explanation, a prima facie case of negligence. He cited with approval the following passage from a judgment of Erle C.J. in *Scott v. London & St. Katherine Docks Company* [2]:—

> "There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence in the absence of explanation by the defendants that the accident arose from want of care."

The principle enunciated in this passage has generally been followed in subsequent cases.

A somewhat different view was taken by Windham J. in the case of *Wije Bus Co. Ltd. v. Soysa* [3]. In that case, a passenger of a motor bus, which went off the road and overturned upon impact with a culvert claimed damages for injuries caused to him by reason of negligence of

[1] *37 N. L. R. 25.* [2] *3 H. & C. 596.*

[3] *(1948) 50 N. L. R. 350.*

the driver of the bus. The driver gave evidence that the accident was due to the steering lock giving way when he was about 20 feet from the culvert which caused the bus to overturn. The District Judge, while accepting this evidence, held following the judgment in *Safena Umma v. Siddick*, that the defendant company was liable in damages as it had not proved that the defect in the steering could not have been reasonably foreseen and remedied. In appeal however, it was held by Windham J. with whom Dias J. agreed that, although the maxim 'res ipsa loquitur' applied in that case in the absence of an explanation, it was not necessary for the defendants to go so far as to prove the absence of negligence on their part but that it was sufficient if they were able to give an explanation of the accident which would negative the presumption of negligence which the unexplained accident had raised. Windham J. sought support for his decision from two South African cases which are referred to in the judgment.

This judgment however was not followed by K. D. de Silva J. in the case of *Cabral v. Alberatne* [1] when it was held, following the earlier case of *Safena Umma v. Siddick*, that where the doctrine of 'res ipsa loquitur' was applicable the burden on the defendant was not only to give a reasonable explanation of the accident in question but also to show that the specific cause of the accident did not connote negligence on his part.

The facts of the *Safena Umma case* bear some similarity to those of the instant case in that the defence in that case too was that the steering gear broke and Dalton J. expressed the view that a bald statement of that nature by a witness for the defendants did not discharge their onus or show that there was no want of care on their part. In the instant case too all the evidence that the defendant produced was through the Works Manager of Rowlands Ltd., who stated that in his experience he had sometimes come across cases where the steering had got locked due to a latent defect and that the vehicle could not be straightened when it happened. In answer to Court however he stated further that the company did not examine the mechanism to see why the steering got locked. *This evidence without more does not in my opinion discharge* the onus of the first defendant to show that he had exercised all the care or, for a matter of that, any care at all, to see that the vehicle was in good condition. If it is sufficient for a defendant merely to show that any particular accident was due to a mechanical defect, there would be hardly any scope for the application of the principle which imposes an obligation on those who have the management of a vehicle to use proper care against possible mechanical defects. This principle has endured so long because of its eminent reasonableness. Else it would hardly ever be possible for a plaintiff to succeed in an action unless he had intimate knowledge of a defendant putting on the road a vehicle known to be defective in its mechanism. Nor will any user of a vehicle be obliged to have a periodical check of his vehicle for mechanical defects.

[1] *(1955) 57 N. L. R. 368.*

When a case, in which the doctrine of *res ipsa loquitur* operates, occurs therefore I think that a defendant is obliged to satisfy the court that he did cause periodical checks and had necessary repairs attended to and did everyting in his power to eliminate mechanical unsoundness. In the absence of such evidence he would not, in my view, have discharged his burden.

It seems to me that the view of Windham J., which derived support from the South African cases, is tantamount to a pronouncement that all that a defendant who has to counter the doctrine of 'res ipsa loquitur' has to do is to point to the actual or probable reason for the accident as being a mechanical defect and that thereafter the plaintiff reverts to the original position of having to prove actual negligence. With great respect, this is a view with which I find it difficult to agree.

When one analyses the question, one is compelled as a starting point to proceed from the basis that a person who puts on the road a mechanically propelled vehicle has an initial duty to exercise sufficient care to see that such mechanical defects as would constitute a damage to other users of the road are avoided. Among such mechanical defects would be the steering gear and the braking system the efficiency of which are of primary importance for the safety of other users of the road. As to whether sufficient care has been exercised in this regard is a matter within the peculiar knowledge of the owner of the vehicle and not of the person who has been the victim of an accident. It would therefore seem unreasonable to require from the latter the necessary evidence to prove that sufficient care was not exercised by the owner of the vehicle. The only reasonable course is for the owner of the vehicle which caused the damage to show that he had exercised reasonable care to ensure its mechanical soundness. Until such evidence is produced, the owner would not, in my judgment, discharge the onus that lies on him to negative the situation created by the operation of the 'res ipsa loquitur' doctrine. If a defendant does not choose to adopt such course it is reasonable to presume that he does not do so as the necessary evidence of the exercise of proper care is not available to be produced.

These are the reasons which compel me to agree with the views expressed by K. D. de Silva J. which are also in full accord with the pronouncement made by Erle C.J. in *Scott v. London & St. Katherine Docks Company* referred to in the earlier part of this judgment. I accordingly hold that the learned District Judge rightly arrived at the conclusion he did.

The appeal is dismissed with costs.

SIVA SUPRAMANIAM, J.—I agree.

Appeal dismissed.